



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
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ALEXANDRIA, VIRGINIA 22322-0300



April 28, 1999

MEMORANDUM FOR LABOR RELATIONS SPECIALISTS AT MACOMS, CIVILIAN
PERSONNEL OPERATIONS CENTER MANAGEMENT AGENCY,
OPERATING CIVILIAN PERSONNEL OFFICES, CIVILIAN
PERSONNEL ADVISORY CENTERS, INDEPENDENT REPORTING
ACTIVITIES AND CIVILIAN PERSONNEL OPERATIONS CENTERS

SUBJECT: FY 98 Labor Relations Program Evaluation—Labor Relations Bulletin #410

For the last five years, the Department of the Army's labor relations indicators have shown steady improvement. There were fewer unfair labor practice (ULP) charges and negotiated grievances than the previous year. In FY 98, this trend changed. Compared to FY 97, there was a 10 percent increase in the number of negotiated grievances filed and the number of ULP charges filed against the agency doubled.

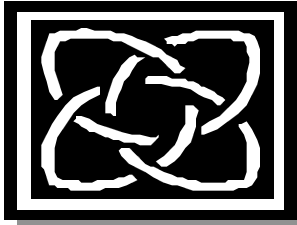
The number of cases taken to arbitration remained constant from the previous year as did the number of ULP complaints issued by the General Counsel (GC) of the Federal Labor Relations Authority (the Authority.)

The enclosed bulletin describes in greater detail the Army's labor relations program in FY 98 and forecasts areas of focus for FY 99.

Please share this bulletin with your civilian personnel officer, your labor attorney and other interested management officials.

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Enclosure



Labor Relations Bulletin

No. 410

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FY 98 Labor Relations Program Evaluation

Each year around this time we take a look at Army's labor relations program; at least from a limited statistical perspective.

From an Army-wide perspective, two issues appeared to dominate the labor relations program in FY 98 - partnership and downsizing.

Partnership

The partnership trend continues to flourish within Army. Anniston Army Depot was a recipient of the 1998 John N. Sturdivant National Partnership Award. For each year the award has been given by the National Partnership Council (NPC), an Army installation has been a recipient. Based on a survey conducted for the National Partnership Council, approximately 60% of our bargaining unit employees are in bargaining units that are members of local labor-management partnership councils.

We continue to be impressed with the strides taken by many Army installations in creating and furthering partnership arrangements.

Downsizing

Downsizing, rightsizing, privatizing, outsourcing, contracting out, BRACing -- they all mean the same thing to the union - employees losing their jobs and the union losing its union members. There is probably nothing that agitates a union official as quickly as downsizing. In Army, unfortunately, the end still isn't quite

in sight. Given the continued downsizing in Army, we can expect to see additional challenges and increased requests for negotiation from the unions. The uncertainty of downsizing also creates significant stress within the workforce. To help alleviate some of the employees' and union's concerns, consideration should be given to increasing partnership efforts where appropriate. Keep your unions informed of the status of possible changes, share information with them and involve the union early in the decision making and problem solving stages. Doing so should generally improve employee morale and agency efficiencies.

Now let's take a look at how Army fared, statistically speaking, in FY 98.

Negotiability Disputes

Appeals - The relatively high number of negotiability appeals involving the Army belies the good year we had in this area. **In FY 98, there were 12 negotiability petitions filed with the Authority.** (See Chart A.) **The 12 cases involved 20 proposals.** This is an increase of nine cases and seventeen proposals from last fiscal year. So, you may be wondering, "What's the good news?" Well, the good news is that all twelve cases came from a single union at one installation. Every other installation in Army either did not face any nonnegotiable union proposals or the parties cooperatively resolved proposals alleged to be nonnegotiable by the activity. That's very good news.

The 12 cases covered a number of topics. The first four cases, involving ten proposals, stemmed from management's decision to reassign an employee and assign him certain new duties that did not affect his series or grade. The proposals submitted by the union all centered around competitively filling the job to which the employee was reassigned. (The union filed individual appeals for each proposal even though all the proposals stemmed from a single management action.)

The next four cases, involving four proposals, stemmed from a single reduction-in-force. The proposals required that the job duties of particular positions be performed only by employees in those positions. Management argued that the proposals violated their right to assign work as they require the assignment of certain duties to specifically identified unit positions.

Three cases, involving four proposals, were raised when the agency implemented a new electronic mail system. These proposals dealt with who could raise computer complaints and the type of software to be used. Management alleged one proposal violated its right to assign work. The union stated the other three proposals violated management's permissive rights and the agency agreed; therefore, there was no basis for the negotiability dispute. (There must be disagreement between the parties over the negotiability of a proposal in order for there to be a valid negotiability dispute.)

The last case, covering two proposals, stemmed from the activity's plan to establish separate Information Management organizations at two different geographic locations. Management advised the union that there was no duty to bargain as the change was de minimus. As management did not claim that the proposals violated law, rule or regulation, there was no basis for the filing of the negotiability appeal. Nevertheless, the union filed the appeal.

Decisions - All 20 proposals described above were either found nonnegotiable, dismissed by the Authority or withdrawn by the union. A number of the union withdrawals were aided by Authority intervention and the election of a new union president. The proposals which management alleged violated our right to assign work were found nonnegotiable. In addition to the dozen cases filed in FY 98, the Authority issued a negotiability decision on a case filed in FY 97. It found the union's proposal addressed a classification matter and dismissed the union's petition.

Impasses

The Federal Service Impasses Panel (the Panel) received 175 requests for assistance in FY 98; an increase of 27 (18%) from last fiscal year. Unions submitted approximately 78% of the requests. Management submitted 16% and the remainder (6%) were joint submissions. **Army installations accounted for 16 (9.1%) of the Panel's 175 requests--this is up 7 (78%) from last year's 9 requests,** but 9.1% requests for Panel assistance is typical for Army. For the last ten years, our portion of the panel's overall case load typically fluctuates between 8 and 14 percent. On the unions' side, 91 (52%) requests to the Panel involved AFGE; NAGE was a party to 13 (7.4%) requests.

As typically occurs, the vast majority (81%) of the cases stemmed from mid-term bargaining. Similarly, the majority of issues raised to the Panel concerned personnel matters (e.g., reassignments, RIF, merit promotion, reorganizations, etc.) In second place were institutional matters such as permissive bargaining, official time, etc.

A brief history of the Panel's cases in FY 98 show that 174 cases were disposed; up 13 (8.1%) from FY 97. The majority of the cases (70 or 40%) were withdrawn prior to the Panel accepting jurisdiction. The Panel declined to accept jurisdiction (e.g., questions of duty to bargain were raised) in 34 (20%) of the cases. Thirty-one (18%) were settled or withdrawn after procedural determinations but prior to an actual Decision and Order by the Panel. These cases could have been settled during written submissions, resolved as a result of mediation efforts by a Panel or staff member or settled based on acceptance of a Panel recommendation.

The Panel issued 33 decisions in FY 98. That's four fewer than last year. Private arbitrators (which we no longer count as part of the Panel's decisions) decided six cases. (In these cases, the Panel either approved a joint request for an outside arbitrator, the parties accepted the Panel's recommendation that an outside arbitrator be used, or the Panel directed outside arbitration.) Twenty-four Opinions and Decisions (72%) were Panel Decisions and Orders; nine (27%) of the 33 decisions were issued by Panel or staff members serving as arbitrators.

Six (18%) of the Panel's 33 decisions involved Army installations. The six cases involved a number of different issues. Two cases involved management's efforts to terminate a 5-4/9 schedule. In one decision, management proved the adverse agency impact which allowed the termination of the schedule. In the other, it did not. Another case involved a number of proposals addressing smoking, official time, leave, health and safety, performance appraisals, training, merit promotion and adverse weather conditions. One case addressed tours of duty and lunch hours. The agency argued that the union's proposal was nonnegotiable and the Panel directed the parties to withdraw the proposal "to permit the Union to request a written declaration of nonnegotiability from the Employer." Another case involved a RIF that had already taken place. In the final

decision, management wanted to convert a break room to an office. The Panel sided with management noting there were other break rooms available for the employees.

Army continues to have a limited presence before the Impasses Panel, which is good. When we do go before the Panel, we typically do well with regard to the outcome of the decisions.

Grievances and Arbitrations

Grievances - There were 1181 negotiated grievances filed by Army bargaining unit employees in FY 98. This is an increase of 110 (10%) from last year, but is the second lowest number of negotiated grievances since FY 79. This appears to be a minor blip in the downward trend of grievances filed under negotiated procedures. (See Charts A and B.) While one of the major commands (MACOMs) saw a 50% increase in its grievances, most MACOMs experienced a decrease in the number of grievances filed under negotiated procedures compared to last fiscal year.

There are approximately 117,715 appropriated fund bargaining unit members in the Department of the Army. This number was developed by subtracting all employees with bargaining unit status codes of 7777 and 8888 from the entire appropriated fund population as reported in ACPERS. *We are not using OPM's Union Recognition in the Federal Government data since the latest data is from 1997 and a lot of changes (e.g., downsizing) have occurred since then.* With an Army bargaining unit member population of 117,715, there were 10.0 negotiated grievances filed per 1,000 appropriated fund bargaining unit members. While slightly up from last year's 8.6 per 1,000 bargaining unit members, it is well within the normal range of 10 to 12 negotiated grievances per 1,000 bargaining unit members. (For example, the rates for FY 96 and 95 were 10.6 and 11.7, respectively.)

Arbitration - Seventy-nine of the 1181 grievances were raised to arbitration. That is identical to the number filed last fiscal year. (See Charts A and C.) The percentage of arbitrations to grievances was 6.7%. That is 6.7% of the grievances filed under the negotiated grievance procedure were raised to arbitration. This compares favorably to last year's rate of 7.4%, though, statistically, the improvement can be attributed to the higher number of grievances filed, it is encouraging that resolution was achieved short of arbitration in spite of the increased volume of grievances.

Thirty-seven arbitration awards were issued in FY 98. That is 56 fewer (60%) than FY 97. While we continue to maintain this data, it is hard to explain. Though we had the same number of arbitrations as last year, we saw a lot fewer arbitration awards issued. Maybe arbitrators are taking a longer time in issuing awards; we should see an increase in the number of awards next year. **Of the 37 awards, management was sustained in 19 (52%) of the decisions. This is an increase from last year's 44% rate. The union was successful in 9 (24%) decisions and 9 (24%) were either split or mitigated.** (See Charts A and D.) Management's success rate remained within its typical range. Normally, management is persuasive in 45 to 60 percent of the cases with the union's success rate around 20 to 30 percent.

Exceptions - **Management did not file any exceptions to arbitrator's awards involving Army installations in FY 98.** Last fiscal year, we filed two.

In FY 1998, the Authority issued two decisions on agency exceptions filed the previous year. The first case concerned an arbitrator that awarded hazardous duty pay for work not identified in the CFR. The agency argued that the award violated the CFR and did not specify the period of time for which the hazardous duty pay was authorized. The Authority accepted the arbitrator's finding that the work in question performed by the grievants fell within the CFR for hazardous duty pay. However, the Authority found the arbitrator did not outline with particularity the periods of time for which the grievants were eligible for the hazard pay.

According to the Authority, an arbitrator must make a finding as to when hazardous materials are present or when the employees are in close proximity to them. This finding can be as detailed as an hourly basis finding or as broad as a percentage of time, e.g., 60% of the time the employees were entitled to HPD. The case was remanded for a more detailed finding by the arbitrator.

In the second case, management established two competitive levels. The union grieved that only one level was necessary. The arbitrator found management relied on an outdated position description in determining the competitive levels and, therefore, violated the CFR. He directed combining the two competitive levels. The agency argued this violated our right to assign and select as well as the CFR. The Authority remanded the award back to the parties for resubmission to the arbitrator, absent settlement,

since it could not determine whether the arbitrator's decision was in compliance with 5 CFR 351.403. Specifically, the Authority could not determine whether the arbitrator intended his finding that the engineers worked in teams (and therefore were interchangeable) to mean that the "similar enough in duties" requirement in 5 CFR 351.403(a)(1) was satisfied.

Oppositions - **Army filed six oppositions to union filed exceptions. The Authority denied three of the six union exceptions; three are still pending.** The Authority also issued seven decisions on union exceptions filed in previous years. Four cases were denied and three were remanded back to the arbitrator, absent settlement by the parties.

In the first of the three remanded cases, the arbitrator had sustained a grievance over a 2-day suspension, but denied the union's request for attorney fees finding that the union was not the prevailing party. (The arbitrator found the employee partly at fault and mitigated the penalty.) The Authority found the arbitrator's denial of attorney fees based on the grievant not being the prevailing party was incorrect. The award of back pay was an indicator that the grievant was the prevailing party. The award was remanded to the parties for a determination on the attorney fees request.

In the second remanded case, the arbitrator denied a grievance alleging the agency discriminated against the grievant on the basis of race when it hadn't selected him for promotion and, instead, selected a non-qualified individual. The Authority remanded the case finding that the record was insufficient to determine whether the selected employee was minimally qualified for the position. In the final remanded case, the arbitrator's refusal to award attorney fees was found deficient. The union had not requested attorney fees as part of the merits of the award. Rather, the union requested that the arbitrator retain jurisdiction to hear the attorney fee arguments. The arbitrator denied the fees in his initial award. As the union had not requested fees during the case, the arbitrator's denial was premature. The Authority noted that its actions were without prejudice to the arbitrator's consideration of a timely request for fees by the union.

The following is our exception experience for the past 19 years:

	<u>FY</u>	<u>80-88</u>	<u>89</u>	<u>90</u>	<u>91</u>	<u>92</u>	<u>93</u>	<u>94</u>	<u>95</u>	<u>96</u>	<u>97</u>	<u>98</u>	<u>Total</u>
Excepts Filed		45	10	8	3	8	7	2	1	2	2	0	88
Award Modified		23	0	6	5	5	4	2	0	1	2	2	50
Reversed or Remanded By FLRA													
Exceptions Remaining		-	-	-	-	-	-	-	-	-	-	-	0

Summary - While the number of negotiated grievances rose slightly, they remained at a relatively low number. The 1181 grievances were the second fewest number of grievances filed under a negotiated procedure since we began maintaining this data. Tied with last year, FY 98 had the fewest number of grievances taken to arbitration. There was a dramatic decrease in the number of arbitration awards issued. **Management was sustained in whole or in part in 76% of the awards.** This compares with the 70% success rate of last fiscal year. We're pleased to see the continued limited number of grievances filed under negotiated procedures. This can probably be attributed to labor-management partnerships, a reduced work force and an increase in the use of alternative dispute resolution processes.

Unfair Labor Practices

Charges - This was a surprising statistical find. **There were 759 charges filed against Army activities; an increase of 391 (106%) from FY 97.** (See Charts A and E.) The 759 ULP charges were the highest number since FY 93. Comparing the number of ULP charges with the unit data in ACPERS shows a rate of approximately 6.45 ULP charges filed per 1,000 bargaining unit members. This is dramatically higher than the 2.49 rate in FY 97 and slightly higher than the FY 96 rate of 4.15. It appears that the high numbers are concentrated in a limited number of installations. One installation accounted for over 25% of all the ULP charges filed against Army installations in FY 98.

Government-wide, the General Counsel received 5747 charges. Army received 13% of the charges, which isn't too bad given it accounts for approximately 20% of the government-wide bargaining unit population.

Complaints - Consistent with the increase in the number of ULP charges, there was an increase in the number of ULP complaints issued by the General Counsel. **Army activities received 41 ULP complaints in FY 98. That is an increase of 10 (32%) from last year.** Complaints equated to 5.4% of charges filed. A ULP complaint was issued for every 18.5 ULP charges filed against Army installations. Last year, a ULP complaint was issued for every 11.87 charges filed. Government-wide, the General Counsel issued a complaint for every 19.6 charges filed. Using our ACPERS data, there were 0.35 complaints issued per 1,000 bargaining unit members within Army. Last year's rate was 0.21.

Decisions - **Of the 41 complaints, two resulted in ULP decisions being issued by the Authority. There were no decisions issued by Administrative Law Judges (ALJs) involving Army installations.** In the first decision, the Authority found no ULP when management transferred the grievant's job duties and changed her rating official; management showed there was legitimate, work-related reasons for the change. It was a ULP, though, for the supervisor to make statements that jobs could be at risk for pursuing grievances. In the second case, the Authority held that the activity did not commit a ULP when it denied a union official from being a personal representative for a staffing specialist. The agency successfully argued that allowing a union official to serve as a personal representative for the staffing specialist would be a conflict of interest.

Summary - While we have experienced the highest number of ULP charges and complaints since FY 93 and 92, respectively, we remain well within the government-wide averages. A single year's data is not sufficient to identify actions outside those ongoing in the Army's labor relations program. Army will continue to promote labor-management partnerships and encourage parties with faltering relationships to consider joint labor-management team building or other related training. Such training is available from the General Counsel of the Authority, FMCS, Field Advisory Services or other similar providers. We will continue to monitor the numbers in the coming months and report back to you with any findings.

Union Representation

OPM did not issue an updated *Union Recognition in the Federal Government* this year. It is currently gathering data for the report and an update should be issued in FY 99.

Based on ACPERS data, there are 127,781 (117,715 appropriated fund and 10,066 nonappropriated fund) bargaining unit employees in Army. This represents an approximate reduction of 20,000 (18,000 appropriated and 2,000 nonappropriated fund) bargaining unit members since 1997. *Keep in mind that this comparison is based on two different sets of numbers, ACPERS and the OPM Union Recognition book.)*

What's Next

For each of the last six years, we have seen fewer and fewer grievances and ULPs. This year, the trend stopped. While it is important not to place too much emphasis on one year's data, FY 98 does serve as a reminder of just how tenuous labor-management relationships can be.

We encourage management to reassess its relationship with its unions and determine what efforts, if any, could be undertaken to improve and enhance how the parties work together in identifying problems and crafting solutions.

We continue to place emphasis in labor-management partnerships as tools for involving employees and union representatives in improving the functions of the activity and in creating a richer and more fulfilling environment for the employees.

Management representatives are also encouraged to consider, with their unions, instituting alternative dispute resolution mechanisms for resolving complaints. Such options as mediation or peer panel reviews are viable alternatives to negotiated grievances or can serve as processes for addressing alleged unfair labor practices.

Another reason for working towards a more cooperative relationship with union officials is the possibility of an expanded scope of bargaining. As has been reported in the press, labor organizations are looking to expand the scope of bargaining by either Executive direction or legislation. An expanded scope

of bargaining provides the parties in a poor labor-management relationship additional areas of dispute. For those in a positive, cooperative relationship, an expanded scope of bargaining provides opportunities for the parties to work together in solving a broader scope of issues affecting the activity and the bargaining unit members.

In addition to partnership efforts, an area of interest for us is the impact downsizing may have on installations' labor relations programs. As a result of downsizing and other related factors, many of the Civilian Personnel Advisory Centers (CPACs) have moved away from having a dedicated labor/employee relations specialist position. This, tied in with the retirement of many seasoned labor relations specialists, has resulted in a loss of labor relations expertise at some installations. Labor relations is often difficult enough for experienced labor practitioners; arranging for generalists to become experts in this field is proving to be a challenge. Continuity in performance of these duties will best assure quality results.

Both regionalization and modernization are effecting the area of collective bargaining. Now, activities must consider the impact a negotiated change to conditions of employment may have on the operations of the servicing Civilian Personnel Operations Center (CPOC). Where negotiations may impact on the CPOC's operations, the activity must ensure proper coordination between the CPOC and the negotiating team. If appropriate, the CPAC can ask that a representative of the CPOC attend the negotiations as a subject matter expert.

Tied to our regionalization/modernization efforts is the need for achieving more standardization with our civilian personnel processes, especially as they relate to streamlining CPOC and CPAC operations. To this end, we will be reviewing personnel policies, such as pay setting and merit promotion plans, to develop common concepts and bargaining goals to help achieve these "Army-wide" processes.

This analysis forecasts that FY 99 will present new opportunities to excel for Army's labor relations practitioners!

Army Labor Relations Statistics **FY 88 - FY 97**

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>	<u>FY92</u>	<u>FY93</u>	<u>FY94</u>	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>	<u>FY98</u>
Grievances	2758	2785	2662	2738	2653	2434	1808	1575	1357	1071	1181
# to arb	183	154	237	135	233	242	177	114	135	79	79
% to arb	6%	5.5%	8.9%	4.9%	8.8%	9.9%	9.8%	7.2%	9.9%	7.4%	6.7%
Arb Awards	149	138	226	178	176	132	106	92	66	93	41
Arb Results*	65M	66M	130M	83M	83M	81M	60M	38M	37M	41M	19M
	26U	27U	60M	30U	55U	23U	25U	27U	16U	28U	9U
	58S	45S	36S	65S	38S	28S	21S	27S	13S	24S	9S
ULP Charges	952	768	1047	1207	1347	972	679	607	530	368	759
ULP Complaints	50	69	84	84	89	30	19	29	23	31	41
% of Charges	5.3%	9.0%	8.0%	7.0%	6.6%	3.1%	2.8%	4.8%	4.3%	8.4%	5.4%
Negotiability	19	19	16	18	8	8	1	15	20	3	12

*M-Management

*U-Union

*S-Split or mitigated

Chart A